



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

August 29, 2016

PR 16-35

Ms. Stacy M. O’Gorman

**Re: O’Gorman v. Town of Coventry**

Dear Ms. O’Gorman:

The investigation into your Access to Public Records Act (“APRA”) complaint filed against the Town of Coventry (“Town”) is complete.

By email correspondence dated June 1, 2016, you allege the Town violated the APRA when it failed to provide you access to the document you requested. Specifically, on May 13, 2016, you made an APRA request with the Town seeking “[d]ocumentation of Boundary Line Report of [a specific address] and Elton Street ROW prepared by Paul Sprague and Kerrie Karwoski.” You claim the Town possesses this document, yet has not provided it.

In response to your complaint, this Department received a substantive response from Town Solicitor Nicholas Gorham, Esquire. Attached to the Town’s response was an email from the Town Clerk Cheryl George to you, dated May 18, 2016. The May 18, 2016 e-mail was in response to your May 13, 2016 APRA request and stated:

“There is no such record of a boundary line report. The Town Manager is aware of your request and will be in touch with you.”

You provided this Department with a rebuttal on June 16, 2016 wherein you attached several emails, which you claim proves that the document that you requested does exist and is being improperly withheld from you.

At the outset, we observe that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has

the Town violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

The APRA states that all records maintained or kept by any public body shall be public records, unless exempt, and every person shall have the right to inspect and/or copy such records. See R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. If no response is received within ten (10) business days, the lack of response will be deemed a denial. See R.I. Gen. Laws § 38-2-7(b).

Here, you contend that the Town failed to supply you a copy of the Boundary Line Report and you claim that various emails support your position that this Report does exist. In particular, you noted an April 28, 2016 email from the Director of Planning and Development to the Town Manager, which provided an update on the boundary line issue and indicated that the Town expected to receive a survey (provided by a private citizen) and that “[o]nce [the Director of Planning and Development] received the survey [he would] further upgrade [his] report.” You also noted a May 13, 2016 email from the Town Manager to you, which indicated that the Town Manager has requested “a copy of [the Director of Planning and Development’s] report” and that upon receipt, this report would be sent to you.

In response to your rebuttal, we again contacted the Town for further clarification. The Town provided a response from Attorney Gorham, indicating that no such “report” exists, and that the only “report” that does exist would be the April 28, 2016 email referenced above that provided an update on the boundary line issue and that this email had already been provided to you. The Town’s response also included an affidavit from the Director of Planning & Development, Mr. Paul Sprague, who affirmed:

“In May 2016 I conducted a site inspection and observed a granite bound on the corner of the side of property owned by [a third party] . . . . To date, I am not in possession of a survey. \*\*\* The only report I ever prepared respecting this property boundary line was an email I sent to the Town Manager on April 28, 2016. \*\*\* I am not in possession of any surveys of the subject property.”

Respectfully, upon reviewing these emails and the evidence presented, we fail to find any evidence that would lead us to conclude that a separate document exists that is being improperly withheld. We emphasize the affidavit of Mr. Sprague, which asserts that no report or survey regarding the boundary line for the Elton Street right of way ever existed. Indeed, the evidence indicates that the only “report” maintained or kept by the Town regarding the property boundary line that could have been responsive to your request was an April 28, 2016 email from Mr. Sprague to the Town Manager, which was provided to you on or about May 13, 2016. Although we have our doubts that this e-mail is actually responsive to your APRA request, this document was provided to you and we find no evidence to establish that the Town had other documents that were responsive to your request and that it refused to provide. This Department has

previously held that the failure of a public body to produce records that do not exist does not violate the APRA. See, e.g., Murphy v. City of Providence, PR 15-07; O'Rourke v. Bradford Fire District, PR 13-11. Accordingly, we find no violation.

Although the Attorney General has found no violation and will not file suit in this matter, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean Lyness", with a stylized flourish at the end.

Sean Lyness  
Special Assistant Attorney General

SL/kr

Cc: Mr. Nicholas Gorham, Esq.